Written Testimony of Ray & Maryellen Furse
Presented on February 23, 2010 to the
Connecticut House Energy & Technology Committee

In Support of H. B. No. 5213 (RAISED) AN ACT CONCERNING THE SITING COUNCIL

Dear Chair and Distinguished Members of the Energy and Technology Committee:

We, Ray & Maryellen Furse, believe the passing of H.B No. 5213 to be an essential corrective to real and potential abuses by Applicants in the present process of review by the Connecticut Siting Council of telecommunication tower sites.

The attached "Motion to Dismiss and for Costs" briefly recapitulates how we reluctantly became participants in the opposition to a telecommunications tower proposed by SBA Towers II LLC CSC (Docket 378) on the Tanner Farm of Rabbit Hill Road, a property abutting ours.

The copious testimony given by opponents in the matter of Docket 378, and its ultimate withdrawal by SBA Towers, demonstrates clearly that the application was deeply flawed in both procedure and in content. In particular, the development rights to the property had been sold to the state under the Farmland Preservation Program; the property owner had no right to enter into a lease agreement with SBA for development of the site; SBA should never have entered into such an agreement with the property owner, nor submitted an application to the Siting Council based on such an agreement; and the CSC should never have entertained such an application.

These are not only our opinions, but supported by testimony in the record of Docket 378. Brief highlights are the testimony of Joseph J. Dippel, Director of the State of Connecticut Department of Agriculture Farmland Preservation Program that "The Tanners do not own development rights to the land at issue; the State of Connecticut does, and SBA Towers II LLC does not have the state agreement to construct the facility" (see Testimony of State of Connecticut Department of Agriculture, dated 5/14/2009); as well, the office of the Attorney General noted SBA' s "Failure to comply with a jurisdictional prerequisite for the filing of its application" by not properly notifying the Department of Agriculture before submitting the application (see Motion to Dismiss, by David H. Wrinn, Assistant Attorney General, for F. Phillip Prelli, Commissioner of Environmental Protection, dated 5/14/2009).

Yet SBA persisted with its application and the Siting Council ignored the opinion of the Attorney General's office that it should not be accepted for review, with ultimate result that ordinary citizens opposed to the application were made to endure the (nearly) entire cycle of application review process. Parties and Intervenors in the action (among them ourselves as abutters, and neighbors who had organized under the acronym of CROWW, for Concerned Citizens of Washington and Warren), had to raise and spend significant amounts of money (totaling in excess of $23,000) and to

take time away from work and families for meetings, legal research, conferring with expert witnesses, preparation of evidence, copying, traveling (three or more trips to New Britain), and often just waiting, through hours of Siting Council hearings. This is in addition to the incalculable waste to taxpayers for the hours spent by local and state officials, professionals, and support staff involved. And yet in the end there was no decision; as the hearings drew to a close, SBA withdrew its application, and the Siting Council declared every related motion moot, including those to dismiss with prejudice and those asking for costs. Nothing was resolved, nothing clarified. However, we did learn a few things along the way:

We have learned that: It is impossible for ordinary citizens to negotiate the procedural and evidentiary minefield of a Siting Council Docket without expensive expert advice. We (Furses) were fortunate to come to know experienced legal counsel sympathetic to our cause. Without that serendipitous relationship, we could not have mounted any credible opposition; we know of other situations in which the opponents of cell tower siting proposals have looked at the impending cost in time and money and simply given up their right to object.

We also learned that: Given their great familiarity with the un-level legal playing field of Siting Council procedure, and given their (relatively) unlimited financial resources, the telecommunications industry feels free to ignore local opposition to tower sites based on scenic, historical, environmental, zoning, and even legal impediments. They know full well that in nearly all cases the huge burden placed on those opposed to their plans will prevent them from mounting successful opposition; and should that opposition approach some level of credibility in the eyes of the Siting Council, they can simply withdraw their application with no penalty.

For these reasons, it is essential that there be some punitive mechanism in place, so the telecommunications industry will refrain from submitting applications as that of Docket 378, so cunningly offensive, so full of misrepresentation, and so legally dubious that that everyone from local residents and town officials, through state agencies, the Attorney General, and even the Governor came to be united in objection to it, and yet still were forced to spend significant resources to defend rights and covenants that should never have needed defending.

For the above reasons we respectfully request the Distinguished Members of the Energy and Technology Committee to support the passage of House Bill No. 5213, An Act Concerning the Siting Council.

Respectfully submitted,

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Subject: Re: Docket 378
Date: May 27, 2009 9:27 AM
Attachments: To the Siting Council.doc

RE: Docket 378: Application of SBA Towers II, LLC ("SBA") for a Certificate of Environmental Compatibility and Public Need for the Construction, Maintenance and Operation of a Telecommunications Facility at One of Two Alternate Sites at Rabbit Hill Road in Warren, Connecticut

MOTION TO DISMISS AND FOR COSTS

To The Council:

We, Ray and Mary Ellen Furse, are owners of property abutting the subject property of the above-named application and parties to the above-named Certification Proceeding. This letter constitutes our MOTION TO DISMISS AND FOR COSTS.

We became involved with opposing the SBA plan for a cell phone tower on the scenic and protected Tanner Farm atop Rabbit Hill when we attended a public "informational meeting" on September 26, 2008. Shortly thereafter (September 28) we wrote:

"We were also taken aback to hear them [SBA, then Optisite] freely admitted that they chose this site with full knowledge that it was on a property with a conservation easement, for which commercial development was prohibited, and that it violates numerous town planning and zoning regulations."

This letter was addressed to our Town Selectmen, who indicated at the meeting that opinions expressed in such letters would be conveyed to the Siting Council. This letter (attached) should be on file with the Siting Council. We availed ourselves of that appropriate channel to express our concerns. We never planned to or desired to become a formal Party to these proceedings; we did so only reluctantly because as taxpayers, we frankly felt ourselves to have been misled by our state government. What is the point of using our taxpayer money to preserve farmland, if all we are preserving are potential cell phone tower sites? As we investigated further, it became obvious that a loophole in the law was being exploited by SBA which, if allowed to succeed, would have devastating consequences on land preservation efforts throughout the state. Our Pre-Filed Testimony explains

this in greater detail.

As time (very quickly) passed, and dismayed that other state agencies were not taking up this issue on behalf of the taxpayers, we reluctantly petitioned to become a Party and began to gather materials to present our opposition. This was not a decision undertaken lightly. Lacking the knowledge base to mount an appropriate legal opposition, we have had to "learn the ropes" on our own, spending significant amounts of time and money researching and writing, copying, collating, mailing, calling, and driving (to the town hall. meetings, Staples), taking time away from our home business of solar installation, not to mention suffering a good deal of anxiety and many sleepless nights.

As the proceedings continued, we were able to read and hear more, and especially by the time of the last session held in Warren, a number of facts had become abundantly clear:

1. We will suffer a significant loss of time and out-of-pocket expenses to oppose this tower, and

2. Should our opposition fail, we will suffer significant devaluation of our property, a double loss, and

3. As taxpayers, we have contributed to the Farmland Preservation Program, which will have failed to avert this attempted encroachment on that program's goals, a triple loss, and

4. As taxpayers, we have paid our state government, through the Attorney General's office, to defend our rights (both as property owners and taxpayers), which will have failed to do so, a quadruple loss, and finally:

5. Even if we prevail, and the Siting Council turns down SBAs application, we still will suffer losses described in 1 and 4 above. And because the Siting Council chose to entertain an application for which there is no clear right to use of the property at issue, the mere act of entertaining the application will have caused these losses.

We feel that the Siting Council should have never agreed to entertain this SBA application in the first place, since SBA stated plainly that Site A was on land for which development rights had been sold to the state. This seems to us akin to a bank providing a mortgage for a home sale for which no title search has been conducted. It is an obvious attempt by SBA to exploit a carelessly worded, singular legislative exception to effect a self-serving end run around explicitly clear state land preservation policies; it is abusive to all

parties, including the Siting Counci, and indeed to all residents and taxpayers of Connecticut. SBA should first have consulted with the DoAG to clarify the development rights situation; judging from the present position taken by the DoAG, SBA surely would have been refused, and we would not have suffered the losses enumerated above.

CONCLUSION

For the foregoing reasons, Ray & Maryellen Furse respectfully request that the Siting Council grant our motion to dismiss the SBA Application, and to restore all costs, both of time and of out-of-pocket expenses, connected with defending against this Application that has affected the procedural and substantive due process and property rights of persons other than SBA.

Respectfully submitted,

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